

## STATUTORY CRIMINAL 4.06

### JUSTIFICATION FOR DEFENSE OF A THIRD PERSON

A defendant is justified in using or threatening physical force in defense of a third person if the following two conditions existed:

1. A reasonable person in the situation would have believed that physical force was immediately necessary to protect against another's use or apparent attempted or threatened use of unlawful physical force against a third person; *and*
2. The defendant used or threatened no more physical force than would have appeared necessary to a reasonable person in the situation.

A defendant may use deadly physical force in defense of a third person only to protect against another's use or apparent attempted or threatened use of deadly physical force.

Defense of a third person justifies the use or threat of physical force or deadly physical force only while the apparent danger continues, and it ends when the apparent danger ends. The force used may not be greater than reasonably necessary to defend against the apparent danger.

The use of physical force or deadly physical force is justified if a reasonable person in the situation would have reasonably believed that immediate physical danger appeared to be present. Actual danger is not necessary to justify the use of physical force or deadly physical force in defense of a third person.

You must decide whether a reasonable person in a similar situation would believe that:

1. Physical force was immediately necessary to protect against another's [use] [attempted use] [threatened use] [apparent attempted use] [apparent threatened use] of unlawful physical force against a third person;
2. Deadly physical force was immediately necessary to protect against another's [use] [attempted use] [threatened use] [apparent attempted use] [apparent threatened use] of unlawful physical force against a third person.

You must measure the defendant's belief against what a reasonable person in the situation would have believed.

If evidence was presented that raises the justification defense of third person for [insert count number and name of offense], then the State has the burden of proving beyond a reasonable doubt that the defendant did not act with such justification. If the State fails to carry this burden, then you must find the defendant not guilty of the charge.

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**SOURCE:** A.R.S. §§ 13-404 & -405 (statutory language as of October 1, 1978) and § 13-205 (statutory language as of April 24, 2006); *State v. Grannis*, 183 Ariz. 52, 60-61, 900 P.2d 1, 9-10 (1995); *State v. Dumaine*, 162 Ariz. 392, 404, 783 P.2d 1184, 1196 (1989); *State v. Noriega*, 142 Ariz. 474, 482, 690 P.2d 775, 783 (1984), *overruled on other grounds*, *State v. Burge*, 167 Ariz. 25, 28 n.7, 804 P.2d 754, 757 n.7 (1990) (overruling only on *Noriega's* holding that a grand jury's allegation of dangerousness in an indictment is insufficient to invoke §13-604's sentence enhancement allegations).

**USE NOTE:** Use the language in brackets as appropriate to the facts.

If there have been past acts of domestic violence as defined in A.R.S. § 13-3601, subsection A, against the defendant by the victim, the state of mind of a reasonable person shall be

determined from the perspective of a reasonable person who has been a victim of those past acts of domestic violence. A.R.S. § 13-415.

“Physical Force” and “Deadly Physical Force” are defined in A.R.S. § 13-105 (Statutory Definitions Instructions 1.05(12) & 1.05(28)).

Justification defenses under chapter 4 of A.R.S. Title 13 are not affirmative defenses for crimes occurring on or after April 24, 2006. However for crimes occurring before this date, they remain affirmative defenses. In such cases, the court shall **delete** the last paragraph of this instruction and instruct on “affirmative defense” so as to inform the jury on the correct burden of proof. “Affirmative defense” is defined in A.R.S. § 13-205 (Statutory Instruction 2.05). An affirmative defense must be shown by a preponderance of the evidence. “Preponderance of the evidence” is defined in Standard Instruction 5b(2).

**COMMENT:** This instruction modifies the 1989 RAJI version of Statutory 4.06 in light of modifications to Statutory 4.04. An instruction that was almost identical to former 4.04 was held reversible error in *Grannis*: “A defendant may only use deadly physical force in self-defense to protect himself from another’s use or attempted use of deadly physical force.” 183 Ariz. at 61, 900 P 2d at 10. Furthermore, “[u]nder A.R.S. §§ 13-404 and -405, *apparent* deadly force can be met with deadly force, so long as defendant’s belief as to apparent deadly force is a reasonable one. An instruction on self-defense is required when a defendant acts under a reasonable belief; actual danger is not required.” (Emphasis in the original).

**MCAO 7/2006**